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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
INTEREST OF AMICUS	ii
SUMMARY OF ARGUMENT	1
ARGUMENT	2
CONCLUSION	13

TABLE OF AUTHORITIES

Buckley v. City of Falls Church,
7 Va. App. 32, 371 S.E.2d 827 (1988) 7

National Organization for Women v. Operation Rescue,
726 F.Supp. 1483, 1489, n.4. (S.D.N.Y. 1989) 11

42 U.S.C. § 1985(3) . . . . . passim

Virginia Code Ann. (1988 Repl. Vol.)

§ 18.2-119) (trespass). 7

§ 18.2-120 (instigating others to trespass) 6, 7

§ 18.2-404 (blocking free passage). 7

§ 18.2-406 (unlawful assembly) 7

INTEREST OF AMICUS

Falls Church, Virginia was the site of Operation Rescue blockades enjoined in this case, and the city participates as *amicus curiae* to urge the Court to affirm the injunction. Operation Rescue repeatedly summoned hundreds of people to Falls Church to mass around Commonwealth Women's Clinic and seal it off, barring women's access to the clinic for abortions or other medical care. Faced with concerted efforts to incapacitate them, the 30-member Falls Church police force cannot secure access to the clinic premises and adjacent public streets. After the entry of the injunction under 42 U.S.C. § 1985(3), however, the illegal blockades stopped. The federal injunction has been critical to effective law enforcement in Falls Church. Operation Rescue is a nationwide effort, and purely local solutions are unrealistic and inappropriate. Injunctions under state law must be litigated on a case-by-case basis, and pertain only to a particular property. Once one clinic is protected, others in the state bear the brunt of the blockades. Moreover, jurisdiction to prosecute persons in contempt of state court injunctions is only state-wide, and many of the blockaders are from out of state.

No. 90-985

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JANE BRAY, OPERATION RESCUE, *et al.*
Petitioners,

v.

ALEXANDRIA WOMEN'S HEALTH CLINIC,
NATIONAL ORGANIZATION FOR WOMEN, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR FALLS CHURCH, VIRGINIA AMICUS CURIAE IN SUPPORT OF RESPONDENTS

SUMMARY OF ARGUMENT

The City of Falls Church urges this Court to affirm the injunction under 42 U.S.C. §1985(3) to prevent blockades that hinder local police in their ability to protect statutory and constitutional rights of citizens. Despite its best efforts, the police department of Falls Church was prevented by the overwhelming number of

people involved in Operation Rescue from securing state and federal rights for women seeking entrance to the Commonwealth Women's Clinic. The clinic was therefore closed for several hours. Since Operation Rescue tactics are used nationwide, the City believes that it is essential that §1985(3) be used to assist police in ensuring that constitutional and statutory rights are protected fully for women who choose to exercise their constitutional right to abortion.

ARGUMENT

On October 29, 1988, local, county, and state police were temporarily unable to secure the protections of state law to people who sought to use the Commonwealth Women's Clinic in Falls Church City because the Operation Rescue blockade frustrated the efforts of Falls Church police to clear access to the clinic. A similar threat to the effectiveness of state law enforcement would be posed by conspiratorial blockades that purposefully prevented African-American children from attending integrated schools, kept members of a religious

congregation from entering their temple, mosque, or church, or that excluded Hispanic voters from the polls. Suck blockades violate § 1985(3) when carried out by a conspiracy seeking to nullify the constitutional rights of a class by overwhelming the state's ability to enforce its laws to protect the class as it exercises its rights. The role of state law in securing personal liberty and organizing peaceful interaction among individuals cannot be fulfilled when nationwide conspiracies are permitted to deprive state-law protection to certain groups.

The City of Falls Church, Virginia, is an independent city of the second class encompassing but 2.2 square miles with about 9,600 residents. Located on State Route 7 (West Broad Street) in the City is the Commonwealth Women's Clinic; it provides a full range of gynecological and obstetric services for women and it also provides counseling and certain reproductive services for men. The clinic holds itself out as a "pro-choice" clinic and it is commonly known that the clinic will provide first trimester abortions.

Over the past many years, there have been weekly

peaceful picketing of the clinic by persons opposed to abortion; there has also been picketing by persons in support of a woman's right to choose a first trimester abortion. The City takes no position on these respective views. Rather, it simply takes the position that it is the obligation of the City to protect the established rights of the protestors to express their view and to protect the patients of the clinic when they are unlawfully impeded or even prohibited from exercising their federal and state rights to reproductive services. Included as well is the obligation to protect the right of the clinic to operate a lawful medical business.

On many occasions persons opposed to the activity of the clinic have trespassed for the purpose of giving anti-abortion literature to patients considering an abortion. See *Buckley v. City of Falls Church*, 7 Va. App. 32, 371 S.E.2d 827 (1988)(defense of necessity not applicable because reasonable alternative means was available to achieve defendants' purpose of communicating with patients "concerning the impact of an abortion on both the fetus and the patient").

More recently, these activities have escalated to situations where persons opposed to abortions have sought to close the clinic by literally imposing a human blockade. These blockades are often commonly referred to as "rescues" and they are preplanned in relative secret. On the selected day, hundreds of persons arrive at the selected clinic (only the organizers know the exact location until the buses of "rescuers" arrive). These persons follow the instructions of the organizers and, typically, they place themselves at every means of access to the clinic, sit down and lock arms. The police provide warnings and then, working in teams, they arrest, photograph, and carry away the trespassers. There are often so many trespassers that school buses are used in shifts to transport the trespassers to the City's Council Chamber, which is converted to a holding area and magistrate's office for the purpose of booking and setting of bail.

As persons are arrested, others run or crawl from the public sidewalk to take their place. The organizers stay on the public sidewalk in the crowd until the police are

able to identify them and make an arrest for instigating others to trespass. Virginia Code Ann. § 18.2-120 (1988 Repl. Vol.).

The City is rightfully proud of its nationally accredited police department; however, it is admitted that it is a small one with only thirty sworn officers. The City has well-defined contingency plans for these blockades, but it cannot combat effectively the military-style tactics of these blockades. It has always been necessary to rely on mutual aid agreements and to ask for assistance from Arlington, Fairfax, and the State police.

But even with warning, getting these forces to the scene and organizing them in a way that the response can be well-measured and not counterproductive takes hours. Once organized, it further takes hours to remove the trespassers. In short, and despite the City's best efforts, for a substantial period the blockade effectively closes the clinic and women are denied th[illegible] state and federal rights.

But the hindering of the state criminal justice system does not end with the arrest. For example, over 200

arrests were made after the October 29, 1988 blockade. The City prosecutes all misdemeanors through the City Attorney and his part-time assistant. There were so many defendants that the trials had to be consolidated and held at one time. The only available site large enough was the community center gymnasium, which lacked a certain decorum.

It must be noted here that the defendants are charged with misdemeanors. These include trespass (Va. Code § 18.2-119), instigating others to trespass (§ 18.2-120), blocking free passage (§ 18.2-404), and unlawful assembly (§ 18.2-406). As the potential charges are misdemeanors, the City has no practical ability to charge or seek injunctions that they can enforce against persons in other states who may have planned the disturbance; even if the states involved were willing to extradite, the process would consume months. The injunctive powers of Virginia courts end at Virginia boundaries. Activities like Operation Rescue are usually multistate activities and the ability of localities like Falls Church to prevent them is all but non-existent.

Even though many persons participating at the scene were prosecuted after each disturbance, the blockades did not stop. Another occurred on December 6, 1988, and again on August 19, 1989. The City believes that the federal injunction at issue here and its ability to be enforced nationwide using the authority of the federal court was critical in preventing additional blockades.

The City's interest, indeed its duty, to protect the rights of citizens secured by federal, state and local laws was greatly enhanced by the injunction. It is the City's position that it was appropriate and fully consistent with federal law.

As said earlier, the City of Falls Church takes no position on the views of either party regarding abortion. If Falls Church were voluntarily to withhold police protection from women seeking to visit the clinics out of a desire to prevent women from having abortions, the City would have violated the women's constitutional and state-protected rights to gynecological services, including abortion. Where it is a mob, rather than a City, that seeks to deprive its targets of constitutional rights by

hindering and obstructing the City from protecting people exercising those rights, the mob action violates §1985(3). In this case, the Falls Church police did all that they were able to do to secure the protection of state law to plaintiffs in this action as they sought to enter Commonwealth Women's Clinic to receive or render services there. Against the forces of Operation Rescue, however, the City's efforts proved inadequate. The police force (even as supplemented at considerable cost by county and state law enforcement officers) was unable to ensure access to the clinic for many hours, during which several patients were unable to have scheduled abortions or receive even the simplest of gynecological services. Some suffered physical injury, locked captive in cars that could not move through the parking lot, or bunkered inside the clinic from which medical personnel seeking to treat them had been denied access.

There is also the incalculable injury to a woman's sense of well-being when she is forced to see that local law enforcement officials were, even temporarily, unable to protect her rights. It is the duty, and it was the intent

of Congress in 1871, to bring the power of the federal government to bear upon such reprehensible efforts at intimidation, be it against African-Americans seeking the same rights as other citizens or women seeking access to lawful reproductive services. In this particular context, there can be no doubt and no evidence need be offered to prove that the decision of a woman to terminate her pregnancy is painful and very difficult as it takes into account the most personal and deeply felt considerations. It would be unfortunate, at best, if the powers of the federal government were unavailable to prevent those persons who would conspire to take undue advantage of women in these circumstances.

It was only when the federal court in this case entered its injunction under §1985(3) against the blockades and those that would act in furtherance of them that these disturbances ceased. Peaceful Operation Rescue demonstrations protected by the First Amendment continue outside the clinic, but with the support of the federal court injunction, those women who choose to do so are also able to seek services at the

picketed clinics.

The City police were, of course, "unable to prevent the closing of the clinic for more than six hours." *National Organization for Women v. Operation Rescue*, 726 F.Supp. 1483, 1489, n.4. (S.D.N.Y. 1989). Police Lieutenant Gregory King of Falls Church, Virginia, testified that an Operation Rescue leader "told me that the rescue mission would cease if I could guarantee that there would be no more abortions at the clinic that day. And of course I couldn't guarantee those kind of things."[1] He described in detail the hindrance the local and state police departments experience at the hands of Operation Rescue:

> ... We have 30 sworn members. So, what that entails is getting together with four other agencies. I use the Arlington County Sheriff's department, the Arlington County Police Department, the Virginia State Police, and sometimes Virginia Department of Corrections to coordinate the arrest procedures on the scene.

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[1]Lieutenant Gregory King testified at the trial. A transcript of his testimony appears in the record on appeal in the United States Court of Appeals for the Fourth Circuit. Reference to his testimony in the form "App. __" refer to the page in the Court of Appeals Appendix on which the quoted passage appears.

> At times we have over 100 people to arrest, it would require about all those agencies joined together to make it work.
>
> ... [In December 1988] we knew that our clinic was gong to be hit and were able to plan and we were there long before it even got started. But it [the clinic] still went down, yes.

R.213-214. Notwithstanding some successful arrests and prosecutions, the blockades continued to occur. R.107.

The City has chosen to uses its available resources to try to keep the clinic open. It would be easier, but wrong, to request the clinic to close. It is easier, but wrong, to ask a controversial organization not to march and express their views when it is apparent that there will be vocal, possibly violent, objections from bystanders.

The City agrees with the legal arguments made by the plaintiffs and the *amici*. It is the purpose of this brief to apprise the court of the very practical considerations involved in this case as City officials have lived through them.

CONCLUSION

For the reasons stated in the foregoing brief of *Amicus Curiae* the City of Falls Church, the decision of the United States Court of Appeals for the Fourth Circuit Court should be affirmed, thereby sustaining the injunction that has permitted the equal enforcement of state law to all persons in Falls Church without regard to whether they seek to exercise unpopular rights.

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